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Human rights situation in Palestine and other occupied Arab territories

Written statement* submitted by Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 February 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Accountability is the only way to prevent further war crimes in Israel and the Occupied Palestinian Territories

Six years ago, the Human Rights Council (HRC) mandated the UN Fact-Finding Mission on the Gaza Conflict (FFM) to investigate violations of international law committed in the context of the military operations in Gaza between 27 December 2008 and 18 January 2009. The FFM's September 2009 report stressed that long-standing impunity was "a key factor in the perpetuation of violence in the region and in the reoccurrence of violations." Among other recommendations, the FFM urged the Security Council to refer the situation in Gaza to the Prosecutor of the International Criminal Court (ICC) after six months if the Israeli and Palestinian authorities did not conduct independent investigations meeting international standards into the serious international humanitarian law (IHL) violations it had documented.

Some 1,400 Palestinians, the majority of them civilians, were killed during that 22-day conflict. The Israeli military opened 52 criminal investigations, but closed the vast majority without any indictments, and only four Israeli soldiers of relatively low rank were eventually charged. The Hamas administration in the Gaza Strip failed to conduct investigations into the firing of indiscriminate rockets, and did not hold anyone accountable for the abductions, unlawful killings, and torture of alleged Palestinian "collaborators". Despite the clear failure of the domestic authorities to provide justice, truth and reparation to victims on either side, the Security Council failed to act.

Since the FFM's report, there have been two additional major Gaza-Israel conflicts, in November 2012 and July-August 2014. There is a prima facie evidence that during both conflicts Israeli forces and Palestinian armed groups committed war crimes. Following both conflicts, the domestic authorities have either completely failed to investigate alleged violations or, in Israel's case, the investigations have been conducted by the Israeli military itself. Key decisions in Israel's system of military investigations, including whether to open a criminal investigation and whether to file charges, continue to rest with Israel's Military Advocate General (MAG), who is also responsible for legal advice during military operations, including all three recent Gaza/Israel conflicts. To date no one on either side has been held accountable for violations during either the 2012 or 2014 conflicts. After the November 2012 conflict, in which Israeli forces killed more than 100 Palestinian civilians, the Israeli military did not open a single criminal investigation.

The scale of destruction, death and injury wrought by Israeli forces in the Gaza Strip during the 50-day conflict in 2014 was unprecedented. According to UN figures, more than 2,250 people were killed in the Gaza Strip, including over 530 children and some 1,000 other civilians, while over 11,000 people were injured. An estimated 117,000 people were left homeless. Six months after the ceasefire, reconstruction has barely begun, due to Israel's continuing restrictions on imports and unfulfilled funding pledges. Palestinian armed groups fired thousands of indiscriminate rockets and mortars into civilian areas of Israel during the conflict; these killed six Israeli civilians, including a child, injured dozens, and damaged civilian property in Israel. Sixty-six Israeli soldiers were also killed.

During and after the 2014 conflict, the Israeli authorities consistently denied access to the Gaza Strip to independent human rights researchers, including Amnesty International and the HRC's Independent Commission of Inquiry on the 2014 Gaza Conflict (CoI). Israel's non-co-operation with the HRC and UN human rights mechanisms extends well beyond the CoI; indeed, Israel recently denied the Special Rapporteur on violence against women access to the Occupied Palestinian Territories. Amnesty International urges the HRC to insist that the Israeli and Egyptian authorities provide unimpeded access to the Gaza Strip for human rights investigators. Furthermore, the HRC must insist that Israel facilitate imports of desperately needed construction materials and completely lift its blockade of the Gaza Strip, now in its eighth devastating year. As noted in the 2009 FFM report, the blockade and the policies comprising it not only violate the Fourth Geneva Convention by collectively punishing Gaza's 1.8 million people, but could also constitute persecution, a crime against humanity.

Despite the denial of access, Amnesty International documented prima facie evidence of serious violations, including war crimes, by Israeli forces and Palestinian armed groups during the most recent conflict. Throughout the conflict, the

Israeli military attacked civilian homes in the Gaza Strip, in some cases killing entire families in their homes without warning. Intentionally directing attacks against civilians not directly participating in hostilities, or against civilian objects such as homes, is a war crime. In the last days of the conflict, Israeli aerial attacks destroyed multi-storey landmark buildings in Gaza. Although residents were warned in advance of those attacks, statements by Israeli officials indicate that they were carried out deliberately and without military necessity, which would constitute a war crime. Israeli forces also attacked ambulances, hospitals, and medical workers during the conflict, in some cases targeting them directly.

The Israeli military has announced a limited number of criminal investigations into cases from the 2014 conflict, but has not opened criminal investigations into the vast majority of cases documented by Amnesty International and other human rights organizations. An update issued by the MAG on 7 December 2014 stated that eight criminal investigations were opened into cases where the alleged violations indicated prima-facie grounds for a reasonable suspicion of misconduct, five of which were incidents of looting.

The update also stated that approximately 100 other incidents were referred to the General Staff Mechanism for Fact-Finding Assessments, established by the Israeli military to examine what it described as "exceptional incidents" during the conflict. About 50 of these cases have been referred back to the MAG for a decision. Of those, the MAG has ordered a criminal investigation into only five cases to date; most of those attacks were documented by Amnesty International, and all could be war crimes. Israel's past military investigations do not provide grounds for optimism that these criminal investigations will lead to prosecution of suspects, particularly military and civilian commanders, or that sentences imposed on any individuals convicted will correspond to the gravity of the alleged crimes.

During the July-August 2014 conflict, Palestinian armed groups fired thousands of indiscriminate rockets and mortars – which cannot be aimed accurately - into Israel. Statements by Hamas and Palestinian armed groups indicate that some of these attacks were intended to kill or injure civilians. Hamas forces also summarily killed at least 23 people in the Gaza Strip who allegedly "collaborated" with Israel. These acts must be investigated as war crimes. Amnesty International has no information that either the Palestinian national consensus government, formed under President Mahmoud Abbas in June 2014, or the Hamas authorities, who still run Palestinian governmental institutions in the Gaza Strip, have conducted credible investigations meeting international standards.

The climate of impunity in Israel and Palestine extends well beyond the armed conflict violations outlined above and perpetuates other types of systematic violations. In particular, Amnesty International would like to highlight Israel's continuing expansion of illegal settlements in the occupied West Bank, and the concomitant forced displacement of Palestinians, both of which could be examined as crimes under international law, and the increasing number of unlawful killings in the West Bank by Israeli forces.

Amnesty International welcomed Palestine's accession to the ICC and its declaration accepting the Court's jurisdiction from 13 June 2014. The organization also welcomed the Prosecutor's subsequent announcement of a preliminary examination. The HRC its members and observer states must oppose any retaliation against the Palestinian authorities for acceding to the ICC, and encourage all parties to cooperate with the ICC Prosecutor. However, Palestine's Article 12(3) declaration accepting ICC jurisdiction over crimes committed since 13 June 2014 will not allow the Prosecutor to consider crimes committed in the 2008-2009 or 2012 conflicts. Amnesty International has thus called on Palestine to reissue a declaration along the lines of its January 2009 one, which accepts the ICC's jurisdiction over crimes committed on "the territory of Palestine since 1 July 2002".

Recommendations:

The 2009 FFM recommended that the Human Rights Council request that the Secretary-General bring its report to the attention of the Security Council under Article 99 of the UN Charter, as well as formally submitting the report to the ICC Prosecutor. The HRC could still take both those actions, and should do so without further delay, as well as pressing for implementation of the FFM's other recommendations. The HRC must give the CoI's findings and recommendations serious consideration, refrain from politicizing the Commission's report, and take all appropriate measures to ensure accountability.

To this end, the HRC should submit the CoI report to the General Assembly and recommend that it transfer the report to the Security Council; request that the Secretary-General bring the report directly to the attention of the Security Council; and formally submit the report to the ICC Prosecutor. The HRC should establish a follow-up mechanism to the CoI, and insist that Israel and the Palestinian authorities cooperate with it. Finally, the HRC must ensure that all avenues towards justice for victims remain open, including by encouraging all states to fulfil their obligation to exercise universal jurisdiction over crimes under international law.